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ABSTRACT

This handbook contains guidelines for the use of Ohio school districts in developing policy on student behavior, rights, and responsibilities. There are three main sections. The first describes current Federal and State law and practices relevant to student rights. The second deals with specific student behaviors that are often the subject of school rules (dress, marriage and pregnancy; drugs and alcohol; violent/disruptive behavior; out-of-school conduct; discipline; and student records), describing relevant current laws and practices and suggesting possible procedures for assuring that behavior rules reflect both student rights and student responsibilities. The final section provides a summary, including the following requisites for prescribed school rules: (1) a rational relationship to the achievement of the educational purpose of the school district; (2) compliance with fundamental constitutional rights; (3) compliance with any nondiscrimination requirements of federal and state law; (4) sufficient definiteness to provide notice to reasonable students that they must conform their conduct to the rule's requirements; (5) reasonableness in the exercise of the authority granted; and (6) all school rules must be reasonably and consistently applied. An appendix contains Section 3316.66 of the Ohio Revised Code, which governs suspension, expulsion, and emergency removal. (KH)

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RIGHTS AND RESPONSIBILITIES

ADMINISTRATIVE GUIDELINES

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INTRODUCTION

Background Information

The State Department of Education in 1971 published the *Rights and Responsibilities Administrative Guidelines*. These guidelines were developed as a working paper that would assist school districts in developing their own policy statements.

As Martin Essex, then Superintendent of Public Instruction, stated in the introduction to the 1971 edition:

> . . .This is a 'working paper' throughout. Every effort has been made to build bridges which permit positive crossing of confrontation chasms that threaten frequent school disruptions. Actual 'crossing limits' must be set by the school districts through development of their own sets of policy statements.

Purpose of Guidelines

The purpose of this publication is to present a set of guidelines for school officials which concentrate on the complex and often troublesome problems arising from the attempt to maintain an educational environment conducive of learning. The guidelines are merely that. *They are not meant to be mandatory impositions placed upon local school districts and their officials by the state.*

This document is divided into three sections. Section I describes current law and practices relevant to student rights.

Section II deals with specific student behaviors that are often the subject of school rules. Relevant current laws and practices are described and procedures suggested which may be used by school districts in assuring that the student behavior rules reflect not only the rights accorded students, but the attendant responsibilities.

Section III is a summary of the publication.

SECTION I: CURRENT LAW AND PRACTICES RELEVANT TO STUDENT RIGHTS

INTRODUCTION

The Supreme Court held in *Maine v. Thiboutot*, 100 S. Ct. 2502 (1980) that 42 U.S.C. § 1983 affords a cause of action for claims under federal laws as well as for claims arising under the United States Constitution.

School officials may be subject to liability for violations of federal laws pertaining to civil rights, special education, student records and the like, since they may no longer be afforded qualified immunity under §1983 now that the Court has decided that local governments are not entitled to qualified good faith immunity, *Owen v. City of Independence*, 455 U.S. 622 (1980). While it is unclear whether school boards, administrators, and teachers may be considered 'local governments' for the purposes of §1983 it is suggested that they stay abreast of all pertinent federal legislation.

A comprehensive consideration of all such legislation affecting education is beyond the scope of this publication, but some provisions of special note are discussed in the subsection titled "Recent Federal Legislation Affecting Education."

First Amendment Rights

Freedom of Speech

The Supreme Court has long held that students enjoy the right of free speech protected by the First Amendment. However, this right must be asserted without material or substantial interference with the operation of the school and the educational process, see *Tinker v. Des Moines*, 393 U.S. 503 (1969).

Schools by their very nature must encourage free inquiry and free expression of ideas. Such expressions should include the personal opinion of student(s) relevant to subject matter being taught, to school activities and policies, to school administration, and to matters of broad social concern and interest. In so expressing themselves, students must not violate the rights of others in the school to free speech guaranteed by the First Amendment.

Freedom of the Press

Just as students have the right to express their opinions in speech, so also do they have the right to express themselves freely by means of publication. Students have a right to freedom of the press, but it is not an unlimited right. Students have the responsibility to abide by reasonable rules and regulations established by boards of education, and implemented by school administrators.

Courts have generally agreed that "expression by high school students may be subjected to prior screening under clear and reasonable regulations; and . . . expression by high school students may be limited

in manner, place or time by means of reasonable and equally applied regulations," *Shanley v. Northeast Ind. School Dist.*, 462, F.2d 960 (5th Cir. 1972). When student publications are censored by school officials, the officials must be prepared to show that they have had reasonable cause to believe the expression prohibited would have resulted in material and substantial interference with school activities or the rights of others; see *Reineke v. Cobb County School District*, 484 F. Supp. 1252 (N.D. Ga. 1980).

Freedom of Petition and Symbolic Expression

The general principles governing freedom of speech also apply to these First Amendment rights. If students petition or express themselves symbolically without threat of substantial and material disruption of normal school activities and discipline, rules aimed at curtailing student petitions or symbolic expression that does not disrupt normal activities and discipline may encounter legal difficulty. The Supreme Court upheld the right of high school students to wear black armbands protesting United States military involvement in Vietnam, given no "evidence that the school authorities had reason to anticipate that the wearing of the armbands would substantially interfere with the work of the school or impinge upon the rights of other students," see *Tinker v. Des Moines Community School District*, 393 U.S. 503, 509.

The concept of symbolic expression obviously has a subjective element. Thus, in determining whether or not a form of expression is, in fact, symbolic, some consideration must be given to the intention of the person who is expressing specific concerns.

Symbolic expression may include but is not limited to the following: wearing a particular type of clothing or hairstyle; wearing clothing, buttons, badges, etc., imprinted with particular slogans or symbols; wearing armbands or other symbols of political or philosophical orientation; and making particular physical gestures.

Freedom of Assembly

In addition to guaranteeing citizens the right to freedom of speech, the First Amendment to the United States Constitution guarantees the right to assemble peacefully. However, this right is subject to careful restriction where the exercise of the right would substantially interfere with the rights and freedoms of other citizens.

An educational system which does not provide adequate time for peaceful assembly of students for the purpose of dealing with relevant ideas and topics, or which denies use of school facilities for such assembly outside of regular school hours, is obviously discouraging one of the most fundamental requisites of good citizenship.

The key to distinguishing between use and abuse of the right of students to assemble peacefully lies in balancing the fundamental nature, necessity and usefulness of the right with the duty to carry on the educational process without substantial and material disruption.

Freedom of Religion

The First Amendment further guarantees the right to act or to refuse to act because of religious beliefs. Therefore, students may not be required to salute the flage or pledge allegiance or be subjected to discipline for not doing so: see *West Virginia State Board of Education v. Barnette*, 319 U.S. 624 (1943). The United States Supreme Court has also found the following activities to be prohibited: (1) recitation of religious prayers as a religious observance on public school property during the school day: see *Engel v. Vitale*, 370 U.S. 421 (1962); (2) reading from the Bible as a religious observance on public school property during the school day: see *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963); (3) released time for religious instruction on public school property during the school day: see *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203 (1958), but see *Zolach v. Clauson*, 343 U.S. 306 (1952).

Ohio's Attorney General has ruled that children of compulsory school age may be excused from attendance at school for religious reasons and assigned to home-based instruction under certain circumstances (O.A.G. 79-056). When the courts determine whether to enforce state compulsory attendance laws over religious objections, they seek to balance the individual's right to religious freedom against the state's legitimate interest in assuring a quality education for its citizens, *State ex rel. v. Olin* 64 Ohio St. 2d 341 (1980).

Other Constitutional Rights Affecting Education

Due Process and Equal Protection

The United States Supreme Court has made clear that, although the rights of children are not coexistent with those of adults, "students . . . are 'persons' under the Constitution," and they do not "shed their con-

stitutional rights . . . at the schoolhouse gate.": see *Tinker v. Des Moines Community School District*, 393 U.S. at 511, 506.

While the courts have yet to define some perimeters of student rights, it is required that students be accorded some measure of substantive and procedural due process. The Court summarized substantive due process requirements in *Baker v. Downey City Board of Education*, 307 F. Supp. 517 (C.D. Ca. 1969), stating:

> A state law, rule or regulation, governing the conduct of high school students must be sufficiently definite to provide notice to reasonable students that they must conform their conduct to its requirements and may not be so vague that persons of common intelligence must guess at its meaning . . .

Some courts have not held boards of education to the strictest standards of specificity in rule drafting: see *People in Interest of K.P.*, 514 P. 2d 1131 (Colo. 1973), where the court upheld the expulsion of a student for fighting pursuant to a rule prohibiting behavior "which is inimicable to the welfare, safety, or morals of other pupils." Still, rules of conduct should be drafted as precisely as possible.

The procedural due process accorded students was clarified in *Goss v. Lopez*, 419 U.S. 565 (1975). The court held therein:

> At the very minimum . . . students facing suspension and the consequent interference with a protected property interest must be given some kind of notice and afforded some kind of hearing . . . [students] facing temporary suspension have interests qualifying for protection of the Due Process Clause . . .

These rudimentary procedures were prescribed for suspension of ten days or less. Longer suspensions or expulsions require more formal procedures.

In addition to procedural and substantive due process, the Fourteenth Amendment also affords students equal protection of the laws. Thus, discrimination in the delivery of educational services to students is prohibited, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954). The Court stated in *Bradley v. School Board of City of Richmond*, 416 U.S. 696 (1974) that a school board has a constitutional responsibility for providing pupils with a nondiscriminatory education.

The Rights of Students to Protection from Unreasonable Search and Seizure

Being persons under the Constitution of the United States, students are protected by the Fourth Amendment from unreasonable search and seizure by either federal or state officials, including school officials. The problem faced in determining whether or not a school official may search a student's person or closed areas, such as lockers, in which students regularly place personal items is directly analogous to the problems faced in determining the school official's role in regulating student appearance. A determination must be made of the point at which the student's right to protection against unreasonable search and seizure meets the school official's duty to act in such a manner as to carry out their statutory obligations to maintain an orderly and efficient school. School officials, because of their special relationship to students, are held to a lower standard than police officers in school searches. Court decisions have held that school officials may search a student's locker without a warrant or the pupil's permission whenever there are reasonable grounds for the search. The facts and circumstances in each individual case determine whether grounds are reasonable.

Court decisions upholding the authority of school officials to search lockers have stated that the student's ownership of the locker is superior to that of other students but not superior to the school's ownership, *State v. Stein*, 456 P. 2d 1 (1969), cert. den. 397 U.S. 947 (1970). Given "reasonable grounds," school officials have been upheld in searching property or person of students, *Bellnier v. Lund*, 438 F. Supp. 47 (N.D.N.Y. 1977). However, strip searches and the use of search dogs have often been found to violate the Fourth Amendment, *People v. D.*, 358 N.Y.S. 2d 403 (1974); and *Doe v. Renfrow*, 631 F. 2d 91 (7th Cir. 1980). While school officials are subject to a lower standard of cause for searching a student's property or person, they may still be held liable for violating the Fourth Amendment prohibiting against *unreasonable* search and seizure.

Recent Federal Legislation Affecting Education

Civil Rights Act of 1964
The Elementary and Secondary Education Act of 1965

Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d et seq., prohibiting discrimination by recipients of federal financial assistance on the basis of race, color or national origin, has been utilized increasingly in litigation during the past ten years. In 1965, Title VI of the Elementary and Secondary Act was passed to assure that Title VI of the

Civil Rights Act be applied uniformly in public schools in all regions of the United States.

Title VI has had varying influences in the schools and has directly required many districts to review educational policies and practices to assure equal educational opportunities and access for all students. The State Board of Education in 1981 published *Mission for the 80s: A Blueprint for Excellence*, a declaration of policy. One of the mission statements is *Implementing Desegregation - Reducing Racial Isolation*. The state seeks to:

> Provide leadership to school districts on the means available to reduce racial isolation of students and school personnel and require districts to eliminate the effects of any past or present *de jure* segregation of students or school personnel.[1]

The impact of Title VI, constitutional provisions, and the state board's policy on students and school districts is important to review. Analysis must focus on classroom-school climate, guidance and counseling, intergroup relationships, individualization of instruction, and multicultural education. Criteria must be developed to assess the role of students, parents, and community organization representatives in the educational process. In addition, curriculum planning includes not only the academic needs, but also the human needs of all students.

Title IX of the Education Amendments of 1972

Title IX of the Education Amendments of 1972, 20 U.S.C. §§*1681 et seq.*, provides in part:

> No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance . . .

This amendment required educational institutions to begin to review their educational procedures and practices that are sexually discriminatory. The law bars sex discrimination in any *academic, extracurricular, research, occupational training* or other educational program (preschool to postgraduate).

1. *The State Board of Education's Mission for the 80s: A Blueprint for Excellence*, Ohio Department of Education 1981.

Administrative Regulations 45 C.F.R. 86.31 to 86.42 clarify specific applications of Title IX. Equality in the use of appraisal and counseling materials is mandated by 45 C.F.R. 86.36, and schools are prohibited from differentiating among students because of their marital or parental status, including pregnancy, by 45 C.F.R. 86.40.

Section 504 of the Rehabilitation Act of 1973

Section 504 of the Rehabilitation Act, as amended, 29 U.S.C. §794, provides:

> No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance . . .

The regulation requires that an institution provide a free appropriate public education to all qualified handicapped persons in its jurisdiction. A "free appropriate public education" must:

- Be designed to meet the *individual educational* needs of qualified handicapped persons as adequately as the needs of nonhandicapped persons are met;
- *Include regular or special education and related aids and services;*
- Place handicapped and nonhandicapped persons in the *same educational setting* to the maximum extent appropriate to meet the needs of handicapped persons;
- Utilize nondiscriminatory *evaluation and placement procedures;*
- Establish and implement *procedural due process safeguards;* and,
- Provide educational and related services *without cost* to handicapped persons or their parents or guardians, *except* for those fees that are imposed on nonhandicapped persons or their parents or guardians.

The Handicapped Act, 20 U.S.C.§§1401 *et. seq.*, provides additional procedural safeguards concerning the identification, evaluation, educational placement or educational program of the handicapped student.

Cases attest to the necessity for schools to comply with such procedures which go beyond due process requirements for regular students. For example, the Fifth Circuit Court of Appeals in *S-1 v. Turlington*, 49 U.S.L.W. 2504 (Feb. 10, 1981), held that the disciplinary expulsion of a mentally handicapped student constitutes a change in educational placement which requires the procedural protections of the Handicapped Act and Section 504 of the Rehabilitation Act, including a due process hearing completed prior to the imposition of discipline, to determine whether the misconduct was a manifestation of handicap. The court further stated that although expulsion is still an acceptable tool, given compliance with the procedural protections of the Handicapped Act, complete cessation of services to a handicapped child during expulsion could not be authorized. School districts, therefore, must be cognizant of such restrictions on the education and discipline of handicapped students.

STATE LAW AFFECTING EDUCATION

Authority of the State Board of Education and Local School Boards

The state board and local boards of education derive authority from Section 3313.20 of the Ohio Revised Code, which provides:

> The Board of Education shall make such rules and regulations as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises.

The State Board of Education believes the issues of student rights and responsibilities to be pertinent to all schools throughout the state. The State Board, however, is a strong advocate of local authority and therefore leaves the responsibility to developing specific student rights and responsibility guides to local districts.

It is strongly suggested that rules and regulations for maintaining order in the schools originate with boards of education themselves. Section 3313.20 of the Ohio Revised Code authorizes boards of education, and not individual school administrators, to make such rules and regulations.

Students' Right to an Education

As required in Article VI, Section 3 of the Ohio Constitution, the State of Ohio has established and must maintain a public school system. The Ohio public school system is currently divided into 631 city, exempted village, and local school districts. By law, all residents between the ages of six and 21 in any of these districts are entitled to attend public schools without charge. By statutory and case law of Ohio, all students, irrespective of race, creed or color, are entitled to the same courses of education and facilities in the public schools. Finally, all students in Ohio's public schools are equally entitled to the enjoyment of all educational opportunities provided by the public school system, O.R.C. §§ 3313.48, 3313.64 (1972 and Supp. 1973); *Goss v. Lopez*, 419 U.S. 565 (1975).

Responsibilities of Students

Along with their right to equality of educational opportunity, students in the Ohio public school system have a commensurate responsibility to act in such a way as not to interfere with the rights of others to that same opportunity. Essential to the fostering and maintaining of educational opportunity is reasonable and necessary order in the educational institution itself. As students have had their rights clarified through litigation, they have likewise had their responsibilities clarified. The law is well stated that a student may be prohibited from engaging in conduct which substantially disrupts the educational process. Even the "Due Process clause can not shield him from suspension properly imposed." *Goss v. Lopez* 419 U.S. at 579.

The responsibility to preserve the rights of others is both a sword and a shield. It cuts off or limits an individual's rights, but prevents the extinction of such rights. Therefore, student responsibilities in the school setting cannot be emphasized too strongly. Underlying the innumerable specific responsibilities which might be discussed are those responsibilities basic to the functioning of any democracy:

(1) The responsibility to respect the dignity and worth of every other individual;

(2) The responsibility to help maintain an environment conducive to the well-being of every individual;

(3) The responsibility to participate to the fullest extent possible in all processes necessary to achieve the assigned goals; and

(4) The responsibility *to help formulate, to know, and to follow reasonable rules* established for the well-being of all.

Each student behavior discussed in Section II of this publication can be measured against the above standard of responsibility.

SECTION II: SPECIFIC STUDENT BEHAVIORS AND GUIDELINES

The ideas presented in this section are primarily suggestive. Each district should consult with its own legal counsel as it seeks to conform its discipline policy to current law and practice. This section addresses issues relevant to discipline policies.

Guiding Principles

Court decisions regarding the validity of school regulations in the areas of student discipline generally hinge upon the following standards:

(1) Whether the rule has a rational relationship to the achievement of the educational purpose of the school district.

(2) Whether the rule infinges on fundamental constitutional rights.

(3) Whether the rule infringes on any nondiscrimination requirements of federal and state law.

(4) Whether any rule is sufficiently definite to provide notice to students that they must conform their conduct to its requirements.

(5) Whether the rule is a reasonable exercise of the authority granted.

Each rule or policy in a school district's conduct code should conform to the above standards. Moreover, such rules must be reasonably and consistently applied so that the punishment is appropriate to the violation.

The specific areas of student behavior discussed below have been identified as major areas of concern in Ohio school districts; hence, suggested procedures have been included for school district consideration.

GUIDELINE I: DRESS AND GROOMING

Current Law and Practice

Decisions of Ohio courts on the validity of school dress and gooming codes have turned upon whether the court determined that the school district successfully demonstrated that the code was reasonably related to the educational function of the school and whether the rule had an educational purpose; see *Royer v. Board of Education*, 51 Ohio App. 2d 17 (1977) and *Laucher v. Simpson*, 28 Ohio App 2d 195 (1971), upholding dress codes, but alsc see *Warren v. Board of Education*, 41 Ohio Misc. 87 (1974), and *Jacobs v. Benedict*, 39 Ohio App. 2d 141 (1973), holding such rules invalid.

School districts also must be congnizant of First Amendment issues which sometimes surface in relation to dress and grooming codes. The U.S. District Court for Ohio held in *Carl v. Beatty*, unreported Case No. 375-64-A (1975), that the school district's prohibition of nonschool related messages or slogans printed on clothing constituted a prior restraint on freedom of speech in violation of the First and Fourteenth Amendments. (First and Fourteenth Amendment rights are discussed more fully in Section I).

Suggested Procedures

Rules governing dress and grooming should allow the individual the greatest possible freedom in determining personal appearance while at the same time preserving order and discipline in the school and assuring the health and safety of students. Prohibitions should be limited to dress and grooming styles which are clearly disruptive of the order in the school or which present health or safety hazards. Involvement of parents and students in the formulation of dress and grooming codes is strongly encouraged.

GUIDELINE II: STUDENT MARRIAGE AND PREGNANCY

Current Law and Practice

Students may not be arbitrarily subjected to disparate treatment because of their marital or parental status. The court in *Davis v. Meek*, 344 F. Supp. 298 (N.D. Ohio 1972), struck down a school regulation excluding married students from extracurricular activities. The court found such a prohibition an improper invasion of marital privacy. A

board of education, may, however, adopt a rule which would, for the health and safety of the student, prohibit a student in an advanced stage of pregnancy from attending regular classes or extracurricular activities, O.A.G. 61-2147; O.A.G. 62-2998. The Attorney General also stated that a board of education has the right to assign a teacher to home instruction of a student who is not allowed to attend classes because of pregnancy, O.A.G. 61-2147.

Suggested Procedures

The practice of punishing or censuring married students or unwed parents by precluding them from school activities is to be avoided. Emphasis should be placed, instead, on providing guidance to such students so that their education is continued. Married students should be allowed to participate in all school activities. Pregnant students should be allowed to participate in all school activities unless it can be shown (by physician's statement) that such activity would be harmful to the expectant mother or child. Provision should be made for the continuation of a pregnant student's basic educational courses during the period of absence from school

GUIDELINE III: DRUGS AND ALCOHOL

Current Law and Practice

Courts have generally upheld school rules prohibiting the possession, use, or sale of drugs or intoxicants by students. Challenges to such rules have generally involved attendant issues. These issues include vagueness in the wording of such rules, violation of due process or illegal search and seizure in enforcement of such rules, or abuse of discretion in rigid application of such rules. In *Wood v. Strickland*, 420 U.S. 308 (1975), the Supreme Court found that a regulation involving the prohibition of the use of alcohol by school students had been properly construed by the school officials, and that the Court of Appeals contrary finding was improvident. In *Wyatt v. Quisenberry*, unreported Case No. CV 80-020134 (C.P. Butler Cty. 1980), an expelled student challenged for vagueness a rule prohibiting a student from "being under the influence" of an alcoholic beverage. The court upheld the validity of the rule although it did lack precision in draftmanship.

A school board's policy to expel any student who sold, used, or possessed any dangerous or narcotic drug as those terms were defined by law was held valid as applied to four public high school students expelled

after being arrested, apparently outside of the school, for possession of marijuana, even though the board's policy did not distinguish between offenses in school and those outside of school, *Caldwell v. Cannady*, 340 F. Supp. 835 (D.C. Tex. 1972), but see *Howard v. Clark*, 299 NYS, 2d 65 (1969), holding contrary. Also in *Frierott v. Board of Education*, unreported Case No. 76-2278 (C P. Montgomery Cty. 1976), the court held that the board of education's refusal to consider the pupil's performance and excellent deportment, combined with the severity of the penalty (expulsion for violation of a drug rule on the first offense), amounted to an abuse of discretion.

Suggested Procedures

Rules governing the possession, use, or sale of drugs or intoxicants should be drafted with specificity, as should all rules of conduct, so that it is clear what conduct consititutes a violation. Such rules should also be reasonably though consistently, applied. While diligence in enforcement of such rules is imperative, school personnel involved in enforcement must not tip the delicate balance between the Fourth Amendment prohibition against unreasonable search and seizure and their duties to protect the health and welfare of all students.

GUIDELINE IV: VIOLENT, DESTRUCTIVE AND SERIOUSLY DISRUPTIVE BEHAVIOR

Current Law and Practice

Section 3313.20 of the Ohio Revised Code provides in part: "The board of education *shall* make such rules and regulations as are necessary for . . . pupils of its schools . . .". This provision vests school boards not only with authority but an affirmative duty to make such rules as might be necessary to prohibit violent, destructive, and seriously disruptive behavior of school students or anyone on the school premises. Moreover, Section 3313.66 (C), the emergency removal provision in the Ohio Revised Code, is further indicative of the concern Ohio lawmakers have that acts which pose a serious threat to persons or property or which threaten serious ongoing disruption to the educational process be prevented.

Challenges to school rules prohibiting such behavior have generally centered around due process, vagueness, and abuse of discretion. The vagueness issue has not consistently been favored by the courts, but due process has been required where punishment for a violation involves a suspension of even brief duration, as in *Goss v. Lopez*, 419 U.S.,

although such procedures may be temporarily suspended in emergency removal.

Suggested Procedures

While some subjectively will necessarily be involved in enforcing rules pertaining to disruption, school personnel should clearly distinguish serious ongoing disruption from routine student acts which briefly interrupt an activity or classroom order. Most importantly, rules governing serious student misbehavior must be sufficiently clear.

GUIDELINE V: NON-SCHOOL CONDUCT

Current Law and Practice

The Ohio Attorney General has held that for the protection of students' morals, boards of education may make rules and regulations governing extracurricular activities of students such as athletic competition, musical organizations, dramatics organizations and productions, social activities, class and school trips, cheerleading, class and school elective offices, literary activities. military activities, service activities, scientific activities, scholastic activities, honor organizations. There is no question that when these activities take place off of school grounds, and as officially sanctioned school activities, boards of education may make reasonable rules and regulations for the control of student conduct, O.A.G. 63-120.

Courts have generally held that school authorities may discipline pupils for out-of-school conduct having a direct and immediate effect on the discipline or general welfare of the school, *Clements v. Board of Trustees of Sheridan County*, 585 P. 2d 197 (Wyo. 1978) and *Schwartz v. Schaker* 293 F. Supp. 238 (D.C.N.Y. 1969). School authorities may even be allowed to discipline a student where the off-campus misbehavior does not involve a school related activity; see *Baker v. Downey City Board of Education*, 307 F. Supp. and *Caldwell v. Cannady*, 340 F. Supp., also see *Howard v. Clark*, 299 N.Y.S. 2d, mentioned previously, holding contrary.

Suggested Procedures

The principles applicable to rules governing violent, destructive and seriously disruptive behaviors are most significant in the regulation of

non-school conduct. The prohibition must not be stated so broadly that it encompasses constitutionally protected rights or activities having no direct effect on the school. The prohibited conduct should be defined as specifically as possible as well as the time and places of its prohibition. If off-campus conduct is to be regulated by the board of education, students must be given adequate notice in the school conduct code.

GUIDELINE VI: DISCIPLINE PRACTICES - SUSPENSION, EXPULSION AND EMERGENCY REMOVAL

Current Law and Practice

Section 3313.661 of the Ohio Revised Code provides:

> Each board of education shall adopt a code regarding suspension, expulsion, and removal specifying the types of misconduct for which a pupil may be suspended, expelled, or removed, and a copy of the code shall be posted in a central location in the school and made available to pupils upon request. Thereafter, no pupil shall be suspended, expelled, or removed except in accordance with the code adopted by the board of education of the school district in which the pupil attends school.

The landmark case in this area, *Goss v. Lopez*, 419 U.S., was a class action brought on behalf of a number of Columbus, Ohio, public school students who were suspended for up to ten days without hearings, either prior to suspension or within a reasonable time thereafter. The United States Supreme Court held in that case that a student facing suspension of ten days or less must be given notice of the charged offense and an informal hearing, the opportunity to present pro and con of the facts to authorities, preferably prior to removal from school, but as soon thereafter as possible if prior notice and hearing were not feasible. The court left room for flexibility in the nature of the required hearing, intimating that the more complex the case and longer the suspension, the more formal the due process procedures required. The court stopped short of requiring right to counsel and cross-examination or presentation of witnesses and left such options to the discretion of the disciplinarian.

Strict adherence to the Ohio statutes governing suspension, expulsion and emergency removal will help school personnel avoid legal problems. Section 3313.66 of the Ohio Revised Code as amended after *Goss v. Lopez* and a summary of its requirements can be found in the Appendix of this publication.

Exclusion from Extracurricular Activities.

Section 3313.66 (E) of the Ohio Revised Code makes clear that due process procedures are not required when students are excluded as a disciplinary measure from extracurricular activities for less than 24 hours. However, no particular due process procedures are set out for exclusions of more than 24 hours. Prudent school districts should set out procedures to be followed in their local codes although the courts have yet held participation in extracurricular activities to be a constitutionally protected property interest.

Suggested Procedures

School officials must fully comply with statutory requirements for suspension, expulsion, and emergency removal. Such requirements, however, are only minimum standards and may be supplemented by local school districts. Also, districts must note special requirements in this area for handicapped students as well as any disparate impact of suspension, expulsion, or removal policies on minority students.

GUIDELINE VII: DISCIPLINE PRACTICES - CORPORAL PUNISHMENT AND PHYSICAL RESTRAINT

Current Law and Practice

Section 3319.41 of the Ohio Revised Code provides:

> A person employed or engaged as a teacher, principal, or administrator in a school, whether public or private, may inflict or cause to be inflicted, reasonable corporal punishment upon a pupil attending such school whenever such punishment is reasonably necessary in order to preserve discipline while such pupil is subject to school authority. Such persons and non-certificated school employees and school bus drivers may also, within the scope of their employment, use and apply such amount of force and restraint as is reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

This section authorizes both corporal punishment and physical restraint. Excessive or unreasonable corporal punishment, however, may

violate the Eight Amendment prescription of cruel and unusual punishment as well as federal and state law, *Ingraham v. Wright*, 430 U.S. 651 (1977); *Hall v. Tawney*, 621 F. 2d 607 (4th Cir. 1980). The infliction of excessive or unreasonable corporal punishment may also subject a school employee to criminal penalties under Ohio Revised Code Section 2919.22 (A), 2901.01 (E), and 2919.22 (B) (2) and (3).

Suggested Procedures

Specific guidelines should be adopted pertaining to the use of corporal punishment and physical restraint. Such guidelines should include: who may administer corporal punishment, who must be notified, what witnesses must be present, and what mode and manner of such punishment is permissible. Provision should also be made for ascertaining any student health problems which militate against such punishment. The student should be informed of the violation for which corporal punishment is administered.

School conduct codes should clearly set out the types of misconduct for which corporal punishment will be rendered and the conditions under which physical restraints will be used. Reasonableness is a paramount consideration in the enforcement of such punishment.

The Family Education and Privacy Rights Act, 20 U.S.C. §§ 1232g (a) (1) (c) (2), provides:

> No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

This provision and the regulations pertaining to it require specific procedures for protecting a student's right to have misleading, inaccurate or otherwise violative information amended.

Much care must be given to the proper handling of student records. Every school district needs to have specific and comprehensive guidelines and procedures.

GUIDELINE VIII: STUDENT RECORDS

Current Law and Practice

Under Ohio law, school authorities are required to maintain many kinds of records. This section deals with confidentiality and protection from improper disclosure of student records maintained by school districts. Three Ohio statutes are relevant to the keeping and maintaining of such records.

Section 3319.32 of the Revised Code reads in part:

> The records of each school, in addition to all other requirements, shall be so kept as to exhibit the names of all pupils enrolled therein, the studies pursued, the character of the work done, and the standing of each pupil . . .

This section also restricts the release of student records.

Section 3321.12 of the Revised Code states:

> The principal or teacher in charge of any public, private, or parochial school shall report to the clerk of the Board of Education of the city, exempted village, or local school district in which the school is situated, the names, ages, and places of residence of all pupils below eighteen years of age in attendance at their schools together with such other facts as said clerk requires to facilitate the carrying out of the laws relating to compulsory education and the employment of minors.

Section 3317.031 of the Revised Code states in part:

> A membership record shall be kept by grades in each school district which shall show the following information for each pupil enrolled: Name, date of birth, name of parent, date entered school, date withdrawn from school, days present, days absent, and the number of days school was open for instruction while the pupil was enrolled. At the end of the school year this membership record shall show the total days due for all pupils in each grade. Such membership record

shall show the pupils that are transported to and from school and it shall also show the pupils that are transported living within one mile of the school attended.

This membership record shall also show any other information prescribed by the State Board of Education.

This membership record shall be kept intact for at least five years and shall be made available to the State Board of Education or its representative in making an audit of the average daily membership or the transportation of the district. The membership records of local school districts shall be filed at the close of each school year in the office of the county superintendent of schools . . .

These statutes, when construed with other statutes which give school authorities wide discretionary power, make it obvious that schools may collect many kinds of information concerning pupils. In the valid exercise of their statutory duties, school authorities often collect and store personal or confidential types of pupil information which, if placed in the wrong hands or kept out of the right hands, may do irreparable harm to students. Because students and their parents or guardians have little control over these records, school personnel have a statutorily mandated obligation to protect students from such harm and to release records only as prescribed.

"Personally identifiable information," other than "directory information," generally can be released only for nonadministrative purposes if the parent, guardian or custodian of a student under 18, or the student, if 18 or older, gives written consent, Section 3319.321 (B) Ohio Revised Code: 20 U.S.C. § 1232g (b)(4)(A). Parties to whom disclosure is made must, further, be informed of the necessity of "consent" for any subsequent release of the information.

Exceptions to this rule are releases in compliance with a judicial order or subpoena and release to *other schools*. However, in the first two instances, federal law requires a school district to make a reasonable effort to notify the parent of a student under 18 or the student, if 18 or over, before releasing the information, 20 U.S.C. §1232g (b)(2)(B). Federal law also restricts releases to other schools in matters of enrollment or eligibility for financial aid. If records are released without consent to a school where a student seeks to enroll, federal law requires notification to the student at the last known address, a copy of the record release if requested, and an opportunity for a hearing to challenge the records content, 20 U.S.C.§1232g (b)(1)(B).

SECTION III: SUMMARY

In this publication an attempt has been made to summarize current law and practices which define the perimeters of student rights and responsibilities.

Eight areas of student behavior have been identified. Each area has included procedures and suggestions.

The following five major requisites for all prescribed school rules have been set forth:

(1) A rational relationship to the achievement of the educational purpose of the school district.

(2) Compliance with fundamental constitutional rights.

(3) Compliance with any nondiscrimination requirements of federal and state law.

(4) Sufficient definiteness to provide notice to reasonable students that they must conform their conduct to the rule's requirements.

(5) Reasonableness in the exercise of the authority granted.

It has been further noted that all school rules must be reasonably and consistently applied.

This handbook has been compiled as an aid to school personnel, not as a substitute for legal counsel. The law is elastic. It stretches and conforms to the everchanging shape of the society governed. Thus, existing statutes are amended or repealed and new statutes are promulgated. New cases are decided by the courts which gloss the meaning of laws or affect the interpretation and application of laws. Therefore, any attempt to delineate student rights and responsibilities must necessarily be an ongoing process. School boards must consistently confer with counsel and stay abreast of changes in the laws which comprise the legal framework within which school personnel must function.

It is hoped that this publication will stimulate continual review and evaluation of student rights and responsibilities.

APPENDIX

Section 3316.66 of the Ohio Revised Code as amended in response to *Goss v. Lopez* and which governs suspension, expulsion, and emergency removal is presented in its entirety.

(A) The superintendent of schools of a city, exempted village, or local school district, or the principal of a public school may suspend a pupil from school for not more than ten school days. No pupil shall be suspended unless prior to the suspension such superintendent or principal:

(1) Gives the pupil written notice of the intention to suspend him and the reasons for the intended suspension; and

(2) Provides the pupil an opportunity to appear at an informal hearing before the principal, assistant principal, or superintendent, or superintendent's designee to challenge the reason for the intended suspension or otherwise to explain his actions.

(B) The superintendent of schools of a city, exempted village, or local school district may expel a pupil from school. No pupil shall be expelled unless prior to his expulsion, such superintendent:

(1) Gives the pupil and his parent, guardian, or custodian written notice of the intention to expel the pupil; and

(2) Provides the pupil and his parent, guardian, custodian, or representative an opportunity to appear in person before the superintendent or his designee to challenge the reasons for the intended expulsion or otherwise to explain the pupil's actions.

The notice required in this division shall include the reasons for the intended expulsion, notification of the opportunity of the pupil, and his parent, guardian, custodian, or representative to appear before the superintendent or his designee to challenge the reasons for the intended expulsion or otherwise to explain the pupil's action, and notification of the time and place to appear. The time to appear shall not be earlier than three nor later than five days after the notice is given, unless the superintendent grants an extension of time at the request of the pupil, or his parent, guardian, custodian, or representative. If an extension is granted after giving the original notice, the superintendent shall notify the pupil and his parent, guardian, custodian, or representative of the new time and place to appear.

(C) If a pupil's presence poses a continuing danger to persons or property or an ongoing threat of disrupting the academic process taking place either within a classroom or elsewhere on the school

premises, the superintendent, or a principal, or assistant principal may remove a pupil from curricular or extracurricular activities or from the school premises, and a teacher may remove a pupil from curricular or extracurricular activities under his supervision, without notice and hearing requirements of division (A) or (B) of this section. As soon as practicable after making such a removal, the teacher shall submit in writing to the principal the reasons for such removal.

If a pupil is removed under this division from a curricular or extracurricular activity or from the school premises, written notice of the hearing and of the reason for the removal shall be given to the pupil as soon as practicable prior to the hearing, which shall be held within 72 hours from the time the initial removal is ordered. The hearing shall be held in accordance with division (A) of this section unless it is probable that the pupil may be subject to expulsion, in which case a hearing in accordance with division (B) of this section shall be held, except that the hearing shall be held within 72 hours of the initial removal. The individual who ordered, caused, or requested the removal to be made shall be present at the hearing.

If the superintendent or the principal reinstates a pupil in a curricular or extracurricular activity under the teacher's supervision prior to the hearing following a removal under this division, the teacher shall, upon request, be given in writing the reason for such reinstatement.

(D) The superintendent or principal shall within 24 hours after the time of a pupil's expulsion or suspension notify in writing the parent, guardian, or custodian of the pupil, and the clerk of the board of education of such expulsion or suspension, and the notice shall include the reason for the expulsion or suspension and shall also include notification of the right of the pupil or his parent, guardian, or custodian to appeal such action to the board of education or to its designee, to be represented in all such appeal proceedings, to be granted a hearing before the board or its designee in order to be heard against such suspension or expulsion, and to request that such hearing be held in executive session.

(E) A pupil or his parent, guardian, or custodian may appeal his expulsion or suspension by a superintendent or a principal to the board of education or to its designee. Such pupil or his parent, guardian, or custodian may be represented in all such appeal pro-

ceedings and shall be granted a hearing before the board or its designee in order to be heard against such suspension or expulsion. At the request of the pupil, or his parent, guardian, or custodian, or attorney, the board or its designee may hold the hearing in executive session, but shall act upon such suspension or expulsion only at a public meeting. The board may, by majority vote of its full membership or by the action of its designee, affirm the order of suspension or may reinstate such pupil or otherwise reverse, vacate, or modify the order of suspension or expulsion. No pupil shall be suspended or expelled from any school beyond the current semester.

The board or its designee shall make a verbatim record of hearings held under this division. The decisions of the board or its designee may be appealed under Chapter 2506 of the Revised Code.

This section shall not be construed to require notice and hearing in accordance with division (A), (B), or (C) of this section in the case of normal disciplinary procedures in which a pupil is removed from a curricular or extracurricular activity for a period of less than 24 hours and is not subject to suspension or expulsion.

Summary of Section 3313.66 of the Ohio Revised Code Provisions:

Suspension

Must be in accordance with the code adopted by the board of education.

Must be executed by the school principal or superintendent.

May neither exceed ten days nor extend beyond the current semester.

Must be preceded by an informal hearing for the student before the principal, superintendent or his designee.

Must be followed by *written* notification within 24 hours to the student's parent, guardian, or custodian, and the clerk of the board of education. (Mailing notification on the day of suspension will satisfy this requirement).

Notification must include:

(1) Reasons for the suspension.
(Referenced to code provisions applicable).

(2) Appraisal of right to appeal to the board of education and right to representation at appeal proceedings.

(3) Appraisal of right to hearing before the board and to request that such hearing be held in executive session.

Expulsion

Must be in accordance with the code adopted by the school district.

Must be executed by the superintendent.

May not extend beyond the current semester.

Must be preceded by *written* notification of the intended expulsion to the student, student's parent, guardian or custodian and opportunity for hearing before the superintendent or his designee.

Notification must include:

(1) Reasons for the intended expulsion.
(Referenced to code sections applicable).

(2) Time and place to appear for hearing and appraisal of the right to representation at hearing.

Hearing shall be no earlier than three days nor later than five days after notice is given unless an extension is granted. (If extension is granted, parties must be notified of the new time and place).

Must be followed by *written* notification within 24 hours to the student's parent, guardian, or custodian, and the clerk of the board of education. (Mailing notification on the day of expulsion will satisfy this requirement).

Notification must include:

(1) Reasons for the expulsion.
(Referenced to code provisions applicable).

(2) Appraisal of right to appeal to the board of education and right to representation at appeal proceedings.

(3) Appraisal of right to hearing before the board and to request that such hearing be held in executive session.

Emergency Removal

Must be in accordance with the code adopted by the board of education.

May only be effected if a student's presence poses a danger to persons or property or an ongoing threat of disruption. (Emergent to the extent distinguishable from a routine discipline problem).

Must be followed by a hearing within 72 hours (in accord with suspension or expulsion procedures).

Hearing notification *in writing* must be given to the pupil as soon as is practicable prior to the hearing (unless expulsion procedures are applicable).

Hearing must have the individual who ordered, caused, or requested the removal in attendance.

If executed by a teacher, must be limited to the activities under the teacher's supervision, and the teacher must submit *written* reasons for the removal to the principal. If the student is reinstated before the hearing, the teacher must, upon request, be given written reasons for such reinstatement.

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